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PP

v.

REZA MOHD SHAH AHMAD SHAH

B

FEDERAL COURT, PUTRAJAYA
ZAKI TUN AZMI PCA
ABDUL AZIZ MOHAMAD FCJ
HASHIM YUSOFF FCJ
[CRIMINAL APPEAL NO: 05-40-2005(W)]

C

16 JANUARY 2009

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(2) - Trafficking in 200g of cannabis - Whether legal presumption of trafficking under s. 37(da) could be invoked - Accused failed to rebut presumption*

D

of trafficking - Prosecution's case proven beyond reasonable doubt - Dangerous Drugs Act 1952, s. 37(d), (da)

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(2) - Trafficking in cannabis - Whether accused had knowledge of nature of*

E

dangerous drugs - Accused running away and throwing plastic bag containing drugs upon seeing police - Inference that accused knew he was carrying prohibited drug - Prosecution need not prove that accused knew exact type or qualities of dangerous drugs being carried

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The respondent was seen by Inspector Mohamad (PW2) carrying in his right hand exh. P3, a plastic bag for some distance. When PW2 shouted "police", the respondent immediately ran and was seen throwing exh. P3 away. Upon recovery of exh. P3 by PW2, it was found to contain cannabis. The respondent was convicted and sentenced to death for an offence of trafficking 795.3

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grammes of cannabis. On appeal, the Court of Appeal substituted the conviction under 39B(2) Dangerous Drugs Act 1952 ("the Act") with one under s. 6 of the Act. The Public Prosecutor appealed against the decision of the Court of Appeal. The crux of the appeal revolved on the issue whether the respondent, without

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the aid of the statutory presumption of "deemed possession", under s. 37(d) of the Act, had knowledge of the nature of the dangerous drugs. The prosecution had not relied on s. 37(d) of the Act for the presumption of knowledge against the respondent but had based its case simply on the respondent's conduct

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claiming that it offered no other explanation but that he knew he was carrying dangerous drugs. The High Court held that proof of possession requires proof of "knowledge of the existence of the

thing itself, that is the existence of the controlled drug, but not the name nor nature of the drug". The Court of Appeal however took the view that the prosecution had to prove knowledge of the particular drug in question, that is cannabis.

Held (allowing the appeal)
Per Abdul Aziz Mohamad FCJ:

(1) It was fanciful to say that the respondent took flight and threw the plastic bag because he probably knew that he was carrying some other prohibited goods. In the absence of any indication to the contrary, the inference must be that he knew that he was carrying what he was in fact carrying, namely, a prohibited drug. It was also fanciful to admit the probability that the appellant acted as he did because he became panicky when confronted with men not in police uniform. If he had thought that they were, say, robbers pretending to be police officers in order to rob him of his belongings, he would have fled without throwing the plastic bag. (para 9)

(2) With proof of knowledge that what was in the plastic bag were dangerous drugs, the prosecution did not also have to prove that the respondent knew what type of dangerous drugs they were or their name or exact qualities. Once knowledge that the thing carried was dangerous drugs was proved, possession of the particular drug, *ie*, cannabis, was proved. (paras 11 & 12)

(3) Where possession of dangerous drug is concerned, to prove the element of guilty knowledge or *mens rea* the prosecution need only prove that the accused knew the nature of the particular dangerous drug that he was in possession of as a dangerous or prohibited drug. The prosecution need not prove knowledge as to the name, type or exact qualities of the dangerous drug. The Court of Appeal erred in holding that the prosecution had to prove that the respondent knew that what he was carrying was cannabis. (paras 21 & 22)

Per Hashim Yusoff FCJ:

(1) The statutory presumption of trafficking under s. 37(da) was applicable in this case as the amount of cannabis was more than 200 grammes in weight. The respondent had failed to rebut the said presumption against him and the prosecution had proved its case, beyond reasonable doubt. (para 35)

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Responden telah dilihat oleh Inspektor Mohamad ('SP2') sebagai membawa di tangan kanannya eks. P3, sebuah beg plastik, untuk satu jarak tertentu. Apabila SP2 menteriak "polis", responden terus
B melarikan diri dan telah dilihat melempar eks. P3. Apabila P3 ditemui oleh SP2, ianya didapati mengandungi kanabis. Responden kemudian telah disabit dan dijatuhkan hukuman mati atas kesalahan mengedar 795.3 gram kannabis. Di rayuan, Mahkamah Rayuan bagaimanapun telah menggantikan sabitan di bawah
C s. 39B(2) Akta Dadah Berbahaya 1952 dengan sabitan di bawah s. 6 Akta. Pendakwa Raya merayu terhadap keputusan Mahkamah Rayuan tersebut. Intipati rayuan adalah berkisar pada isu sama ada responden, tanpa dibantu anggapan statutori "andaian milikan" di bawah s. 37(d) Akta, mempunyai pengetahuan tentang sifat dadah
D berbahaya. Pendakwaan tidak bergantung kepada s. 37(d) Akta untuk membangkitkan anggapan pengetahuan terhadap responden, tetapi mengasaskan kesnya semata-mata atas kelakuan responden yang dikatakan menjurus kepada satu rumusan sahaja, iaitu bahawa responden tahu bahawa ia sedang membawa dadah berbahaya.
E Mahkamah Tinggi memutuskan bahawa bukti milikan memerlukan bukti "pengetahuan tentang kewujudan barang itu sendiri, iaitu kewujudan dadah terlarang tersebut, dan bukannya nama atau sifat dadah itu". Mahkamah Rayuan bagaimanapun berpendapat bahawa pendakwaan harus membuktikan pengetahuan dadah berkenaan,
F iaitu bahawa ia adalah kanabis.

Diputuskan (membenarkan rayuan)
Oleh Abdul Aziz Mohamad HMP:

(1) Adalah aneh untuk mengatakan bahawa responden melarikan
G diri dan membuang beg plastik kerana ia mungkin mengetahui bahawa ia sedang membawa barang-barang terlarang lain. Dengan ketiadaan apa-apa petunjuk sebaliknya, inferensnya adalah bahawa ia tahu bahawa ia membawa apa yang sebenarnya ia sedang bawa, iaitu dadah terlarang. Adalah juga
H aneh untuk menerima kemungkinan bahawa perayu bertindak seperti yang dilakukannya kerana beliau panik apabila berdepan dengan orang-orang yang tidak memakai uniform polis. Jika dia, sebagai contoh, merasakan bahawa mereka adalah perompak yang hendak merompak barang-barangnya, maka beliau boleh
I melarikan diri tanpa perlu membuang beg plastik.

(2) Dengan adanya bukti pengetahuan bahawa apa yang terkandung di dalam beg plastik adalah dadah berbahaya, maka pendakwaan tidak lagi perlu membuktikan bahawa responden mengetahui tentang jenis dadah berbahaya tersebut ataupun namanya ataupun sifat-sifat sebenarnya. Sebaik pengetahuan bahawa barang yang dibawa itu adalah dadah berbahaya berjaya dibuktikan, maka milikan dadah berkenaan, yakni kanabis, telah dibuktikan.

(3) Setakat yang berkaitan dengan dadah berbahaya, bagi membuktikan elemen pengetahuan bersalah atau *mens rea*, pendakwaan hanya perlu membuktikan bahawa tertuduh mengetahui sifat dadah berbahaya yang berada dalam milikannya itu sebagai dadah berbahaya atau terlarang. Pendakwaan tidak perlu membuktikan pengetahuan mengenai nama, jenis atau ciri sebenar dadah berbahaya. Mahkamah Rayuan khilaf dalam memutuskan bahawa pendakwaan perlu membuktikan bahawa responden tahu bahawa apa yang dibawanya adalah kanabis.

Oleh Hashim Yusoff HMP:

(1) Anggapan statutori pengedaran di bawah s. 37(da) terpakai kepada kes di sini kerana jumlah kanabis melebihi berat 200 gram. Responden gagal menyangkal anggapan terhadapnya itu dan pendakwaan telah membuktikan kesnya di luar keraguan munasabah.

Case(s) referred to:
Abdullah Zawawi Yusoff v. PP [1993] 4 CLJ 1 SC ***(refd)***
Chan Pean Leon v. Public Prosecutor [1956] 1 LNS 17 HC ***(refd)***
Director of Public Prosecutions v. Wishart Brooks [1974] AC 862 ***(refd)***
Leow Nghee Lim v. Reg [1955] 1 LNS 53 ***(refd)***
Muhammed Hassan v. PP [1998] 2 CLJ 170 FC ***(refd)***
Neo Koon Cheo v. R [1959] 1 LNS 64 ***(refd)***
Parlan Dadeh v. PP [2009] 1 CLJ 717 FC ***(refd)***
PP v. Mohd Farid Mohd Sukis & Anor [2002] 8 CLJ 814 HC ***(refd)***
PP v. Phua Keng Tong [1988] 2 MLJ 279 ***(refd)***
PP v. Reza Mohd Shah Ahmad Shah [2002] 1 LNS 157 HC ***(refd)***
Reza Mohd Shah Ahmad Shah v. PP [2005] 4 CLJ 581 CA ***(refd)***
Sim Teck Ho v. PP [2000] 4 SLR 39 ***(refd)***
Taib Mohamad v. PP [2002] 3 CLJ 680 CA ***(refd)***
Tan Teck Chew v. PP [2002] 1 CLJ 736 CA ***(refd)***
Toh Ah Loh and Mak Thim v. Rex [1948] 1 LNS 72 ***(refd)***

A *Toh Su Kuan v. PP [2005] 3 CLJ 740 CA* ***(refd)***
Warner v. Metropolitan Police Commissioner [1968] 2 All ER 356; [1969] 2 AC 256 ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 6, 37(d), (da), 39A(2), 39B(2)

B

For the appellant - Nurulhuda Nuraini Mohd Nor DPP
For the respondent - Edmund Bon Tai Soon (Nik Mohamed Ikhwan with him); M/s Chooi & Co

[Appeal from Court of Appeal; Criminal Appeal No: W-05-34-2002]

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[Editor's note: For the Court of Appeal judgment, please see Reza Mohd Shah Ahmad Shah v. PP [2005] 4 CLJ 581.]

Reported by Amutha Suppayah

D

JUDGMENT

Abdul Aziz Mohamad FCJ:

E **[1]** In the High Court, the prosecution relied on evidence of actual knowledge to prove the element of knowledge that is necessary for possession in criminal law. The evidence relied on was that of the respondent, upon being aware of police presence, when their leader shouted "Police!", immediately running away and
F throwing the plastic bag containing two packages of cannabis that he was carrying. The prosecution did not choose to rely on the presumption of knowledge in s. 37(d) of the Dangerous Drugs Act 1952. That was because if they did, then, by reason of this court's decision in *Muhammed Hassan v. Public Prosecutor* [1998] 2
G CLJ 170, they would not have been able to rely also on the presumption of trafficking in s. 37(da), arising from possession of the requisite amount of drug.

[2] The presumption of knowledge in s. 37(d) is in the following
H terms:

> (d) any person who is found to have had in his custody or under his control anything whatsoever containing any dangerous drug shall, until the contrary is proved, be deemed to have been in possession of such drug and shall,
I until the contrary is proved, be deemed to have known the nature of such drug;

[3] The judgment of the High Court is reported as *Public Prosecutor v. Reza Mohd Shah Ahmad Shah* [2002] 1 LNS 157. This is what the learned trial judge said:

> The fact that the accused was carrying (the plastic bag) with its contents followed by the speed at which he ran and threw it upon being confronted show that there is a clear *nexus* between his conduct and the offence in question. He wanted to part possession with what constituted the offence. It is a clear indication of his guilty mind. This is sufficient to infer that the accused had knowledge of the existence of the dangerous drugs in (the plastic bag) ... The inference drawn in this case that the accused had knowledge of the existence of the dangerous drugs does not suggest that he knew that it was cannabis. With regard to the extent and nature of knowledge of the dangerous drugs that the prosecution must prove, I consider it necessary to reproduce what I had said in *Public Prosecutor v. Mohd Farid bin Mohd Sukis & Anor.*

[4] There follows the passage reproduced from *Mohd Farid Mohd Sukis & Anor*, reported in [2002] 8 CLJ 814, in which the learned trial judge began by saying, "It must be observed that in proving this element (of knowledge) the obligation of the prosecution is only to establish that the accused had knowledge ... of the existence of the dangerous drug but not its qualities". He then quoted a passage from the Singapore case of *Sim Teck Ho v. PP* [2000] 4 SLR 39, at pp. 42-43, where Yong Pung How CJ, after quoting a passage from the speech of Lord Pearce in *Warner v. Metropolitan Police Commissioner* [1969] 2 AC 256, at p. 305, concluded that, as regards knowledge, proof of possession requires proof of "knowledge of the existence of the thing itself, that is the existence of the controlled drug, but not the name nor nature of the drug".

[5] Then following the end of the passage reproduced from *Mohd Farid*, the learned trial judge said, "Thus, it is not necessary for the prosecution to prove that the accused had knowledge of the nature of the drugs. It follows that the inferences drawn from the direct evidence are sufficient to show that the accused had possession of the cannabis."

[6] The grounds of judgment of the Court of Appeal are reported as *Reza Mohd Shah Ahmad Shah v. PP* [2005] 4 CLJ 581. The Court of Appeal took the view that the prosecution had to prove knowledge of the particular drug in question, that is

A cannabis, and said at p. 585 d-e that "the issue is whether the appellant had the knowledge that he was carrying cannabis". The Court of Appeal arrived at the following conclusion at p. 587 g-h:

> But in our view, just because the appellant took flight and threw the plastic bag containing dangerous drug does not point to one and only conclusion that he knew what he was carrying was the dangerous drug, cannabis. In the circumstances, other inferences can be made such as that he did so because he may be carrying any other prohibited goods other than cannabis or that he was panicky and therefore chose to run away and throw out the bag he was carrying more so, in this case, when the police who confronted him were not in uniform.

[7] The Court of Appeal therefore found that the prosecution had failed to prove actual knowledge but the court had recourse to the presumption of knowledge in s. 37(d) and found the respondent guilty of possession under s. 6 of the Act. Recourse being had to the presumption in s. 37(d), it was not possible, because of *Muhammed bin Hassan (supra)*, to also have recourse to the presumption of trafficking in s. 37(da).

[8] There are two aspects to the judgment of the Court of Appeal as regards knowledge. The first aspect is regarding the type or extent of knowledge that is required for proof of possession. To the Court of Appeal it must be knowledge of the particular drug in question, in this case cannabis. The learned DPP understood the learned trial judge to mean that the requisite knowledge need not be "as to the exact nature or quality" of the drug, and maintained in this appeal that the learned trial judge was right. The second aspect is the view of the Court of Appeal that other inferences could be drawn from the respondent's act of running away and throwing the plastic bag than that he knew he was carrying cannabis, such as that he knew he was carrying some other prohibited goods or that he became panicky when confronted by men not in police uniform. To the learned DPP that was mere speculation on the part of the Court of Appeal. Learned counsel for the respondent's submission in this appeal has been confined to those two aspects.

[9] The second aspect can be disposed of briefly. I think it is fanciful to say that the respondent took flight and threw the plastic bag because he probably knew that he was carrying some other prohibited goods. In the absence of any indication to the contrary, the inference must be that he knew that he was carrying

what he was in fact carrying, namely, a prohibited drug. It is also in my judgment fanciful to admit the probability that the appellant acted as he did because he became panicky when confronted with men not in police uniform. If he had thought that they were, say, robbers pretending to be police officers in order to rob him of his belongings, he would have fled without throwing the plastic bag.

[10] As regards the first aspect, learned counsel for the respondent submitted that this appeal by the Public Prosecutor revolved around the following "narrow question of legal interpretation" which he framed in his written submission:

> For a Court to find an accused guilty for possession of dangerous drugs ie, 'actual possession' as understood in criminal law without the aid of the statutory presumption under section 37(d) of 'deemed possession', must the prosecution prove beyond a reasonable doubt that the accused had knowledge of the nature of the dangerous drugs (in addition to having knowledge of the existence of the dangerous drugs)?

[11] The question obviously arose from the learned trial judge's finding that with proof that the respondent had knowledge that there existed dangerous drugs in the plastic bag, the prosecution did not also have to prove that the respondent had knowledge of the "nature" of the drugs. Obviously, in framing the question, the learned trial judge was construed as saying that to prove possession it is not necessary to prove knowledge of the "nature" of the thing possessed. But it is clear to me, after considering as a whole all that the learned trial judge said on the question of knowledge, as I have set out, including what was said by him and by Yong Pung How CJ in the passage reproduced from *Mohd Farid*, that was not what the learned trial judge meant. What he meant was that with proof of knowledge that what was in the plastic bag were dangerous drugs, the prosecution did not also have to prove that the respondent knew what type of dangerous drugs they were or their name or exact qualities. That was what he meant by the "nature" that the prosecution did not have to prove knowledge of. He did not mean to say that the prosecution did not have to prove knowledge of the "nature" of the drugs as dangerous drugs. That he did find the prosecution had proved when he spoke of knowledge of the existence of dangerous drugs in the plastic bag. He meant that the respondent knew that there were dangerous drugs in the plastic bag or, in other words, that the respondent knew that what the plastic bag contained were dangerous drugs. That was what the learned trial judge meant

when he said that the respondent "wanted to part possession with what constituted the offence" and that it was "a clear indication of his guilty mind". The respondent had a guilty mind because he knew that he had dangerous drugs in his possession.

[12] To the learned trial judge, therefore, for the prosecution to prove that the respondent was in possession of cannabis the prosecution need only prove, as regards knowledge, that the respondent had knowledge that what he was carrying were dangerous drugs. The prosecution did not also have to prove that he knew that the dangerous drugs were cannabis. Therefore once knowledge that the thing carried was dangerous drugs was proved, possession of the particular drug, that is cannabis, was proved. That was why the learned trial judge, while saying that proof by inference "that the accused had knowledge of the existence of the dangerous drugs does not suggest that he knew that it was cannabis", nevertheless concluded "that the inferences drawn from the direct evidence are sufficient to show that the accused had possession of the cannabis".

[13] I am sure that the learned trial judge was not unaware of the authorities, such as those that I will be mentioning later, that say that possession in criminal law requires knowledge of the nature of the thing possessed and that he was not disagreeing with those authorities. In *Mohd Farid*, after the passage reproduced in his judgment in the present case, he had said, at p. 421 H-I,in reference to *Director of Public Prosecutions v. Wishart Brooks* [1974] AC 862 and *Neo Koon Cheo v. R* [1959] 1 LNS 64, "Both these cases support the proposition that knowledge of the nature of the drugs possessed can be inferred from the circumstances of the case". He was speaking of proof by inference of knowledge of "the nature of the drugs possessed". I think it is a matter of his understanding of what is meant by "nature of the drugs possessed". When he said in the present case that the prosecution did not have to prove knowledge of the nature of the drugs he must have said it on a view of "nature" as meaning name or type or exact qualities. But if "nature" means nature as a dangerous drug, then, when he said that the accused had knowledge of the existence of the dangerous drugs, which I understand to mean that the accused knew that there were dangerous drugs in the plastic bag, the learned trial judge must be taken to be saying, consistently with the authorities, that the prosecution did have to prove, and did prove, knowledge of the nature of the dangerous drugs, but nature as dangerous drugs.

[14] The "question of legal interpretation" that learned counsel for the respondent posed is that of the meaning of the word "nature" in s. 37(d). As to why the meaning of a word in a statutory provision is relevant in this case that does not rely on the provision, this became clear as oral submission progressed. The respondent's counsel contended that "nature" in s. 37(d) means the particular type or name of the dangerous drug. On that basis he argued that to prove actual possession in a case that does not rely on the presumption in s. 37(d), it must be proved that the accused knew the name or type of the dangerous drug concerned – as being knowledge of the "nature" of the drug – because if it were not so, the burden of proving possession in a case that does not rely on the presumption would be lower than that in a case that does. This is a fallacious argument. Even if, in a case that does not rely on the presumption, the knowledge that is necessary to be proven as knowledge of the nature of the drug is knowledge as to the name or actual type of the drug, the burden on the prosecution in a case that relies on the presumption will always be lower, because in such a case all that the prosecution would need to prove is custody or control of the thing containing the dangerous drug.

[15] Learned counsel for the respondent submitted that the Dangerous Drugs Act 1952 being a penal statute, it should be construed strictly, and if there is any ambiguity in the meaning of the word "nature" in s. 37(d), the construction that is in favour of the accused should be favoured. But he did not cite any authorities on the meaning of the word "nature" in s. 37(d), probably because there are none. Instead he cited the following five authorities.

[16] In *Tan Teck Chew v. Public Prosecutor* [2002] 1 CLJ 736, KC Vohrah JCA said in the Court of Appeal, at p. 739, "There was of course no finding of knowledge of heroin in the bag. The trial judge had to rely on s. 37(d) ... to infer as a presumption that he knew of the nature of the heroin", and, at p. 742, he spoke of the appellant failing to rebut the presumption in s. 37(d) "that he knew that what was contained in the bag was heroin". That case cannot, by those statements, be taken as authority for contending that "nature" in s. 37(d) means the particular type or name of the dangerous drug because the question of the meaning of "nature" did not arise in that case. Since the dangerous drug that was the subject of the charge in that case was heroin it was natural to speak of knowledge as knowledge as to heroin. The same may be

said of *Taib Mohamad v. Public Prosecutor* [2002] 3 CLJ 680 where KC Vohrah JCA said in the Court of Appeal, at p. 684, "... the judge should only have called the accused to make his defence on the charge of the possession of the cannabis based on the presumption under s. 37(d) ... that he knew that *(sic)* nature of the drug ...", and, at p. 685, "... his defence ... did not rebut the presumption of knowledge under s. 37(d) ... that he knew the nature of the material he was carrying was cannabis".

[17] In *Chan Pean Leon v. Public Prosecutor* [1956] 1 LNS 17, the charge was of assisting in carrying on a public lottery and the question of possession concerned certain counterfoils. The case did not concern any statutory presumption of possession. Speaking of the *mens rea* aspect of possession, Thomson J, (upper right), said, "... it is necessary to prove that the person in possession knows the nature of the thing possessed" and added, as an example, "If ... it was a lottery document it must be proved that he knew it was a lottery document". The latter statement cannot be taken as authority for the proposition that in a drug case possession requires proof of knowledge of the particular drug in respect of which the accused is charged. That is because the statement does not involve the idea of a particular type of lottery document. Lottery document was spoken of as a general class, like dangerous drug. Applied to dangerous drug, that statement becomes "If ... it was a dangerous drug, it must be proved that he knew it was a dangerous drug", and not the type or name of the particular dangerous drug as well.

[18] A similar situation is to be found in *Toh Ah Loh & Mak Thim v. Rex* [1948] 1 LNS 72. It was a case of possession of ammunition in ammunition boxes. Gordon-Smith Ag. CJ said at p. 55 that in order for possession to incriminate, the possessor "must know the nature of the thing possessed" and that as regards the accused in that case the jury must be satisfied that "he knew the boxes contained ammunition". The case concerned ammunition as a general class and not any particular type of ammunition.

[19] Of the five cases relied on by learned counsel for the respondent in support of his contention that "nature" in s. 37(d) means the particular name or type of the dangerous drug concerned, *Toh Su Kuan v. PP* [2005] 3 CLJ 740, a drug case, is the only case which may be understood to rule that knowledge of the nature of the thing possessed must be exact or specific knowledge. In that case the prosecution did not rely on s. 37(d)

but sought to prove possession by evidence. The accused was found to carry 356 packets of heroin concealed at various parts of his body. The learned trial judge held that the manner in which the packets were concealed indicated knowledge that the packets contained heroin. On appeal it was submitted on behalf of the accused that from the manner in which the packets were concealed the accused might be taken to have known that he was carrying some illicit substance but not its precise nature. The Court of Appeal agreed and held that the accused ought not to have been called to enter upon his defence. The Court of Appeal said, at p. 746:

> In our judgment, the manner in which the packets were fastened to the appellant's person shows at the highest that he had knowledge the packets contained some prohibited substance, perhaps, drugs or perhaps some other substance which was unlawful to have in one's possession. But it certainly does not prove that the appellant knew that the packets contained heroin, the drug which forms the subject matter of the charge. It follows from what we have said thus far that from the totality of the evidence led by the prosecution that the vital ingredient of *mens rea* possession required by s. 37(da)(i) had not been established. On that ground alone the learned judge ought not to have called the appellant to enter upon his defence. And this is a case where the learned deputy took the position that this was either a case of actual trafficking or no offence.

That decision was relied on by the Court of Appeal in the present case.

[20] The learned DPP informed us that the Public Prosecutor's appeal against that decision had been withdrawn because the warrant of arrest against the accused, who had been released following his success in the Court of Appeal, could not be executed. In my judgment, the decision was, with respect, an erroneous decision. Nik Hashim FCJ has also said so quite recently in *Parlan Dadeh v. Public Prosecutor* [2009] 1 CLJ 717.

[21] In my judgment, where possession of a dangerous drug is concerned, to prove the element of guilty knowledge or *mens rea* the prosecution need only prove that the accused knew the nature of the particular dangerous drug that he was in possession of as a dangerous or prohibited drug. The prosecution need not also prove knowledge as to the name, type or exact qualities of the dangerous drug. When the authorities say that for proof of possession in criminal law it is necessary to prove that the

possessor knew the nature of the thing possessed, they mean knowledge of what the thing essentially or basically is. I share the view of Taylor J, who said in *Leow Nghee Lim v. Reg.* [1955] 1 LNS 53, "Without at least general knowledge there cannot be possession but there can be possession without full and exact knowledge".

[22] Not only is that, to my mind, a fair and just construction of what is meant by knowledge of the nature of the thing possessed, but were the meaning to be as may be inferred from the decision in *Toh Su Kuan (supra)*, in cases of trafficking in a dangerous drug where the prosecution seek to rely on the presumption of trafficking by reason of possession of the requisite amount of the drug, such as the present and many other cases that are likely to arise, where guilty knowledge can only be inferred from circumstances, the accused will always be acquitted without their defence being called because it will always be argued that while the circumstances show that they knew they had in their possession a dangerous drug, the circumstances do not show beyond reasonable doubt that they knew what type of drug it was or its name or exact qualities, and it would be virtually impossible to defeat the argument. In my judgment, therefore, the Court of Appeal erred in holding that the prosecution had to prove that the respondent knew that what he was carrying was actually cannabis.

[23] As to the meaning of "nature" in s. 37(d), I do not think it really matters what the extent of the meaning is, because the presumption is rebuttable. The moment custody or control of the thing containing the dangerous drug is established, knowledge of the nature of the drug is presumed. If nature means only nature as a dangerous drug, the accused is entitled to prove, if he can, that he did not know that the contents of the thing he was in custody or control of were a dangerous drug. If, as contended by learned counsel for the respondent, nature means only the name, type or exact qualities of the dangerous drug, or if it means also that besides nature as a dangerous drug, the accused is still entitled to prove, if he can, that he did not know that the contents of the thing that he was in custody or control of were a dangerous drug and it would inevitably follow that he did not know the name, type or exact qualities of the dangerous drug.

[24] For the reasons that I have given I would allow the appeal, set aside the orders of the Court of Appeal and confirm the conviction and sentence by the High Court.

Hashim Yusoff FCJ:

[25] The respondent was convicted and sentenced to death by the High Court for an offence of trafficking 795.3 grammes of cannabis. On appeal, the Court of Appeal substituted the conviction under 39B(2) Dangerous Drugs Act 1952 ("the Act") with one under s. 6 of the Act and imposed a sentence of 18 years imprisonment with effect from his date of arrest ie, 14 August 2000, plus the minimum of ten strokes of whipping under s. 39A(2) of the Act. The Public Prosecutor is now appealing against the decision of the Court of Appeal.

[26] The brief facts are quite straight forward. The respondent was seen by Inspector Mohamad Alpiyang bin Ali (PW2) carrying in his right hand exh. P3, a plastic bag for some distance. When PW2 shouted "police", the respondent immediately ran and was seen throwing exh. P3 away. Upon recovery of exh. P3 by PW2, it was found to contain the offending 795.3 grammes of cannabis.

[27] The crux of this appeal revolves on the issue whether the accused/respondent, without the aid of the statutory presumption under s. 37(d) of the Act of "deemed possession" had knowledge of the nature of the dangerous drugs.

[28] The learned DPP submitted that the Court of Appeal was of the view that just because the respondent took flight and threw the plastic bag containing the dangerous drugs did not point to the one and only conclusion that he knew what he was carrying was the dangerous drug, cannabis. In the circumstances, other inferences can be made such as that he did so because he may be carrying any other prohibited goods other than cannabis or that he was panicky and therefore chose to run away and throw away the bag he was carrying more so, in this case, when the police who confronted him were not in uniform. (See: para. 11 of the grounds of judgment of the Court of Appeal).

[29] It is the learned DPP's submission that the prosecution is not relying on s. 37(d) of the Act for the presumption of knowledge against the respondent. The prosecution is basing its case simply on the conduct of the respondent which offers no other explanation but that he knew he was carrying dangerous drugs.

[30] Learned counsel for the respondent however submitted that the trial judge found that "it is not necessary for the prosecution to prove that the accused had knowledge of the nature of the drugs. It follows that the inferences drawn from the direct evidence are sufficient to show that the accused had possession of the cannabis." (See p. 22-23 of the appeal record). He then referred to several local authorities which have interpreted that "actual possession" requires proof that the possessor must have known the nature of the drug which was being carried. (See: *Tan Teck Chew v. PP* [2002] 1 CLJ 736; *Taib Mohamad v. PP* [2002] 3 CLJ 680 and *Toh Su Kuan v. PP* [2005] 3 CLJ 740, 744-745.

[31] In the instant appeal, the learned trial judge had said in his grounds of judgment (at p. 11 of the appeal record) that, relying on the case of *PP v. Phua Keng Tong & 2 Others Appeals* [1988] 2 MLJ 279, as proof of knowledge is very often a matter of inference, the conduct of the respondent prior to his arrest is brought into sharp focus. The fact that the accused was carrying exh. P3 with its contents followed by the speed at which he ran and threw it upon being confronted by the police, show that there is a clear *nexus* between his conduct and the offence in question ie, that he wanted to part possession with what constituted the offence. It is a clear indication of his guilty mind. This is sufficient to infer that the accused had knowledge of the existence of the dangerous drugs in exh. P3. I agree with the learned trial judge on this point.

[32] In the case of *Warner v. Metropolitan Police Commissioner* [1968] 2 All ER 356, the appellant was tried on a charge that he had in his possession a substance specified in the schedule to the Drugs (Prevention of Misuse) Act 1964 namely 20,000 tablets containing amphetamine sulphate. Lord Reid at p. 367, had this to say: "Further it would be pedantic to hold that it must be shown that the accused knew precisely which drugs he had in his possession. Ignorance of the law is no defence and in fact virtually everyone knows that there are prohibited drugs. So it would be quite sufficient to prove facts from which it would properly be inferred that the accused knew that he had a prohibited drug in his possession."

[33] The case of *Abdullah Zawawi Yusoff v. PP* [1993] 4 CLJ 1 is distinguishable because in that case the Appellant took to his heels as soon as he had heard DPC Mohd Hashim's announcement of the discovery of the wooden box containing a

plastic bag wherein the cannabis was found. In the instant appeal, the respondent already threw the plastic bag (P3) away even before its cannabis contents were discovered by the police.

[34] I am also unable to agree with the Court of Appeal on its finding that on the facts of this case, that it could not be inferred the respondent did have the knowledge that what he possessed was the dangerous drug, cannabis for reasons as stated earlier above. Clearly on the evidence before the trial judge, the respondent was in possession and having custody and control of the plastic bag which contained the cannabis. His running away and throwing away the plastic bag (P3) are the overt acts from which the learned trial judge had correctly inferred that the respondent knew the nature of the contents of the said plastic bag (P3) to be cannabis. The learned trial judge also came to the conclusion that the respondent's defence was in the nature of a bare denial and doubted the credibility of his evidence that he was not carrying exh. P3. As such he was unable to accept the defence advanced by the respondent that PW2 was not at the scene as PW2 was cross-examined at length on the basis that he was at the scene.

[35] The learned trial judge had appropriately considered the defence and gave his reasons why he had rejected it. The statutory presumption of trafficking under s. 37(da) is applicable in this case as the amount of cannabis is more than 200 grammes in weight. The respondent was also held by the trial judge to have failed to rebut the said presumption against him and that the prosecution had proved its case, beyond reasonable doubt.

[36] On the evidence available in this case I am of the view that the Court of Appeal had erred in disturbing the findings of facts by the trial judge. For the reasons adumbrated above, I therefore allow this appeal and set aside the order of the Court of Appeal and restore the conviction and sentence imposed by the High Court.